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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,	)	No. CR-07-0793 CW
	)	
Plaintiff,	)	GOVERNMENT'S SENTENCING
	)	MEMORANDUM
v.	)	
	)	<b>Sentencing Date: July 23, 2008, 2:00 p.m.,</b>
JOSE JESUS MARTINEZ,	)	<b>The Honorable Claudia Wilken</b>
	)	
Defendant.	)	
	)	

The United States of America requests that Defendant Jose Jesus Martinez be sentenced to 188 months imprisonment, the low end of the United States Sentencing Guidelines ("Guidelines") range, consistent with the Plea Agreement and the recommendation of the United States Probation Office.

**FACTUAL BACKGROUND**

On three occasions from August 2007 to October 2007, an undercover police detective purchased three ounces of heroin and one ounce of cocaine base from the defendant. In addition, on October 9, 2007, a San Leandro police officer conducted a search of the defendant during which he found .9 grams of cocaine base in his pants pockets. Officers also searched his car and found .23 grams of heroin, another 12.1 grams of cocaine base in a hidden compartment, and

1 another 59 grams of heroin inside the car vents. Officers also found a digital scale and numerous  
2 baggies in the car. The defendant consented to a search of his home, in which officers found 28  
3 rounds of firearm ammunition and a hard case for a handgun in the defendant's bedroom.

#### 4 THE SENTENCING GUIDELINES

5 As agreed upon in the Plea Agreement and as set forth in the PSR, the offense level is 31,  
6 and the appropriate criminal history category, pursuant to U.S.S.G. § 4B1.1, is VI. The  
7 Probation Office recommends 188 months imprisonment. Given the conduct of the defendant in  
8 the instant offense and his criminal history, the United States agrees with the recommendation of  
9 the Probation Office.

#### 10 ARGUMENT

#### 11 **APPLICATION OF THE FACTORS IN 18 U.S.C. § 3553(a) DEMONSTRATES THAT A** 12 **SENTENCE OF 188 MONTHS IMPRISONMENT AND FOUR YEARS OF** **SUPERVISED RELEASE IS REASONABLE.**

13 The Supreme Court recently noted that the "Guidelines . . . seek to embody the § 3553(a)  
14 considerations, both in principle and in practice." Rita v. United States, 127 S. Ct. 2456, 2464  
15 (2007). These factors or considerations include the nature and circumstances of the offense, the  
16 history and characteristics of the defendant, the need for the sentence to promote respect for the  
17 law, afford adequate deterrence, and protect the public from further criminal conduct by the  
18 defendant. 18 U.S.C. § 3553(a). Each of these factors support a sentence of 188 months'  
19 imprisonment.

20 Defendant's conduct in the instant case is part of a pattern of serious criminal activity,  
21 resulting in his classification as a career offender under the Guidelines. Defendant's adult felony  
22 convictions include: (1) assault with a deadly weapon, an incident during which the defendant  
23 pulled out a handgun and shot a victim who attempted to intercede on behalf of defendant's  
24 girlfriend, PSR PP35, (2) possession or purchase for sale of narcotics or controlled substance;  
25 and (3) felon in possession of a firearm, prosecuted by this Office. Indeed, the defendant was  
26 still on supervised release when he committed the instant offense. Defendant's other adult  
27 convictions include a conviction for carrying a concealed weapon and for driving with a  
28 suspended license. Defendant's criminal history shows that he is not simply a comparatively

1 minor offender among other career offenders; rather, defendant has shown a propensity for  
2 violence, for using guns, and for drug dealing that places him squarely within career offender  
3 status.

4 Defendant has been in custody or on some form of monitored release for the last fifteen  
5 years. (PSR ¶¶ 35-37). Defendant was imprisoned on an assault charge from May 1993 to June  
6 1996, after which he was on parole. (PSR ¶ 35). Approximately eight months later, on February  
7 28, 1997, Defendant was arrested for a narcotics offense, for which he was sentenced to two  
8 years imprisonment. (PSR ¶ 36). He was paroled on that conviction on October 17, 1998. (*Id.*).

9 One year later, on October 27, 1999, Defendant's parole was suspended and he was returned to  
10 custody. (*Id.*). On January 5, 2000, he was reinstated on parole. (*Id.*). A few weeks later, on  
11 January 24, 2000, the defendant was arrested with a gun at the Bay Fair BART station in San  
12 Leandro, California, and on November 27, 2000, he was convicted of being a felon in possession  
13 of a firearm and sentenced to 70 months' imprisonment on the felon in possession charge. (PSR  
14 ¶ 37). The term of supervised release relating to the felon in possession charge commenced on  
15 March 6, 2006. (*Id.*). On February 2, 2007, less than a year after being on supervised release,  
16 defendant was arrested for driving under the influence of marijuana. (*Id.*). The defendant also  
17 tested positive for controlled substances on seven occasions. (*Id.*). Based on the February 2,  
18 2007 arrest and the positive drug tests, on May 7, 2007, the Court took judicial notice that the  
19 defendant violated his conditions of supervised release. (*Id.*). Approximately four months later,  
20 on August 30, 2007, an undercover detective made the first of three drug buys from the  
21 defendant. (PSR ¶ 36). As this chronology makes clear, since May 1993, the longest period in  
22 between arrests for the defendant is one year.

23 In light of the above, the sentence recommended by the United States and within the  
24 sentencing range agreed upon by the parties achieves the sentencing goals set forth in 18 U.S.C. §  
25 3553(a).

### 26 CONCLUSION

27 For the foregoing reasons, the United States respectfully requests that the Court  
28 determine that defendant's Guidelines offense level is 31 and his criminal history category is VI.

1 The United States further respectfully requests that, taking into consideration the sentencing  
2 factors set forth in section 3553(a), the Court sentence defendant to the low-end of the applicable  
3 Guidelines range, namely, 188 months imprisonment, impose a four-year term of supervised  
4 release (under the terms and conditions recommended by the Probation Office), and order  
5 defendant to pay a \$100 special assessment.

6 DATED: July 17, 2008

7 Respectfully submitted,

8 JOSEPH P. RUSSONIELLO  
9 United States Attorney

10 /s/  
11 CHRISTINE Y. WONG  
12 Assistant United States Attorney  
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